

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of March, two thousand eleven.

PRESENT:

DENNIS JACOBS,
Chief Judge,
JOSEPH M. McLAUGHLIN,
ROBERT D. SACK,
Circuit Judges.

MU WENG WANG,
Petitioner,

v.

10-459-ag
NAC

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Peter D. Lobel, Joshua E. Bardavid,
New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney
General; Mark C. Walters, Senior
Litigation Counsel; Aaron R. Petty,
Trial Attorney, Office of
Immigration Litigation, U.S.
Department of Justice, Washington
D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Mu Weng Wang, a native and citizen of the
6 People's Republic of China, seeks review of a January 6,
7 2010, decision of the BIA affirming the February 14, 2008,
8 decision of Immigration Judge ("IJ") Sandy K. Hom denying
9 his application for asylum, withholding of removal, and
10 relief under the Convention Against Torture ("CAT"). *In re*
11 *Mu Weng Wang*, No. A098 354 192 (B.I.A. Jan. 6, 2010), *aff'g*
12 No. A098 354 192 (Immig. Ct. N.Y. City Feb. 14, 2008). We
13 assume the parties' familiarity with the underlying facts
14 and procedural history in this case.

15 Under the circumstances of this case, we review both
16 the IJ's and the BIA's opinions "for the sake of
17 completeness." *Zaman v. Mukasey*, 514 F.3d 233, 237 (2d Cir.
18 2008). The applicable standards of review are well-
19 established. See 8 U.S.C. § 1252(b)(4)(B); *Yanqin Weng v.*
20 *Holder*, 562 F.3d 510, 513 (2d Cir. 2009).

21 The agency did not err in applying our decision in *Shi*
22 *Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296 (2d Cir.

1 2007) to deny Wang's applications for relief. Initially,
2 the BIA had found Wang eligible for relief, and remanded for
3 background and security checks under *In re M-D-*, 24 I. & N.
4 Dec. 138 (BIA 2007). On remand, the IJ considered this
5 Court's intervening decision in *Shi Liang Lin* as new
6 material evidence, and denied relief on that basis. The BIA
7 dismissed Wang's subsequent appeal.

8 Wang raises several challenges to the agency's
9 consideration of *Shi Liang Lin* as new evidence. However,
10 regardless of whether our decision constituted new evidence,
11 upon remand from the BIA, the IJ reacquired jurisdiction to
12 consider all matters because the BIA did not expressly
13 retain jurisdiction and did not qualify or limit the scope
14 of remand for a specific purpose. See *In re M-D-*, 24 I. &
15 N. Dec. at 141-42 (holding that the IJ had authority to
16 consider an applicant's adjustment of status application
17 when a case was remanded for purposes of conducting
18 background checks); *In re Patel*, 16 I. & N. Dec. 600, 601
19 (BIA 1978) (holding that "when the Board remands a case to
20 an immigration judge for further proceedings, it divests
21 itself of jurisdiction of that case unless jurisdiction is
22 expressly retained" and that, "unless the Board qualifies or

1 limits the remand for a specific purpose, the remand is
2 effective for the stated purpose and for consideration of
3 any and all matters which the Service officer deems
4 appropriate in the exercise of his administrative discretion
5 or which are brought to his attention in compliance with the
6 appropriate regulations"). Moreover, even if the IJ could
7 not consider *Shi Liang Lin* on remand, Wang does not present
8 any arguments challenging the BIA's alternative holding that
9 it would exercise its *sua sponte* authority to reopen Wang's
10 case in light of *Shi Liang Lin*. See 8 C.F.R. § 1003.2(a);
11 *In re G-D-*, 22 I. & N. Dec. 1132 (BIA 1999).

12 Further, the agency did not err in concluding that our
13 instructions in *Shi Liang Lin* did not preclude the
14 application of that decision to Wang's case. Although our
15 decision in *Shi Liang Lin* is not a basis to reopen
16 proceedings when relief has already been granted, *Shi Liang*
17 *Lin*, 494 F.3d at 314, the BIA's initial finding that Wang
18 was eligible for asylum was not itself a grant of relief,
19 see 8 C.F.R. § 1003.1(d)(6) (stating that the BIA "shall not
20 issue a decision affirming or granting to an alien an
21 immigration status, relief or protection from removal, or
22 other immigration benefit" if background and security checks
23 need to be completed or made current); see also *In re M-D-*,

1 24 I. & N. Dec. at 141-42. Thus, the agency did not err in
2 concluding that *Shi Liang Lin* applied to Wang's case on
3 remand. *Cf. NLRB v. Coca-Cola Bottling Co. of Buffalo,*
4 *Inc.*, 55 F.3d 74, 77 (2d Cir. 1995) (recognizing that an
5 intervening change in the controlling law authorizes
6 departure from a prior ruling in the same litigation).
7 Given that Wang does not present any arguments about whether
8 *Shi Liang Lin* was applied correctly or whether he was
9 otherwise entitled to any of his requested relief, we do not
10 reach those issues.

11 For the foregoing reasons, the petition for review is
12 DENIED. As we have completed our review, any stay of
13 removal that the Court previously granted in this petition
14 is VACATED, and any pending motion for a stay of removal in
15 this petition is DISMISSED as moot. Any pending request for
16 oral argument in this petition is DENIED in accordance with
17 Federal Rule of Appellate Procedure 34(a)(2), and Second
18 Circuit Local Rule 34.1(b).

19 FOR THE COURT:
20 Catherine O'Hagan Wolfe, Clerk
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